

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Delta Technology Corp.

CASE 41U-0108-R-2023
41U 200256-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Delta Technology Corp. stock claim 41U 200256-00 was decreed with the source name listed as "Unnamed Tributary of Little Trout Creek.

2. The following DNRC issue remark was decreed on claim 41U 200256-00:

ON 3/11/1985, AFTER ISSUANCE OF THE TEMPORARY PRELIMINARY DECREE, THE DNRC NOTIFIED THE WATER COURT OF A POTENTIAL ISSUE WITH THE SOURCE NAME FOR THIS CLAIM. THE ELEMENT IS BEING ADDED TO THE OBJECTION LIST AND WILL BE ADDRESSED DURING ADJUDICATION OF THE PRELIMINARY DECREE.

All DNRC issue remarks must be resolved.

3. An Order was issued on February 28, 2023, explaining that based on this Water Master's assessment, the source name is correct as listed, but that the Claimant is best situated to determine if the source name is correct. A deadline was set for Claimant Delta Technology Corp. to file a statement agreeing or disagreeing that the decreed source name is correct for claim 41U 200256-00. The Order indicated that if nothing were filed by the March 31, 2023 deadline, this Water Master would remove the issue remark with no changes to the elements of the claim.

The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564. Nothing was filed overcoming the prima facie validity of claim 41U 200256-00.

2. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

RECOMMENDATION

1. The issue remark should be removed from 41U 200256-00 with no changes to the elements of the claim.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Delta Technology Corp.
c/o Larry Thomas, Trustee
1223 Valentine Ave Se
Pacific, WA 98047-2106

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U

Water Right Number: 41U 200256-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DELTA TECHNOLOGY CORP
% LARRY THOMAS, TRUSTEE
1223 VALENTINE AVE SE
PACIFIC, WA 98047 2106

Priority Date: DECEMBER 31, 1910

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF LITTLE TROUT CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		E2NE	1	17N	3W	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		N2	6	17N	2W	CASCADE
---	--	----	---	-----	----	---------

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			E2NE	1	17N	3W	CASCADE
2			N2	6	17N	2W	CASCADE